

In the High Court of Judicature at Madras

Dated : 17.10.2006

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN

WRIT PETITION NO.12113 of 2006

& WPMP.NO.13715 OF 2006

The Special Officer, Maduranthakam
Cooperative Sugar Mills
Kancheepuram District.

..Petitioner

Vs

1.The Joint Commissioner of Labour
under the Payment of Gratuity Act,
1972, Teynampet, Chennai-6.

2.N.Thandavarayan

3.The Assistant Commissioner of Labour-II
Controlling Authority under the Payment
of Gratuity Act, 1972, Teynampet, Chennai-6.

*(R3 impleaded as per order dated 27.7.2006 by NPVJ in WPMP.NO.
16824 of 2006).*

..Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records of the Controlling Authority dated 26.11.2004 made in
P.G.No.111 of 2004 on the file of the Assistant Commissioner of
Labour-II, Controlling Authority under the Payment of Gratuity Act,
office of the Deputy Commissioner of Labour-II as confirmed by the
order of the first respondent dated 28.10.2005 made in I.A.No.8 of
2005 and quash the same *(prayer amended as per order dated
27.7.2006 by NPVJ in WPMP.NO.16825 of 2006).*

For Petitioner : Mrs.G.Thilakavathi

For Respondent-2 : Mr.S.T.Varadharajulu

O R D E R

Originally, the writ petition has been filed seeking for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent dated 28.10.2005 made in I.A.No.8 of 2005, quash the same and consequently direct the first respondent to hear the appeal on merits. Thereafter, the prayer was amended by an order dated 27.7.2006 made in WPMP.NO.16825 of 2006 to issue a Writ of Certiorari to call for the records of the Controlling Authority dated 26.11.2004 made in P.G.No.111 of 2004 on the file of the Assistant Commissioner of Labour-II, Controlling Authority under the Payment of Gratuity Act, office of the Deputy Commissioner of Labour-II as confirmed by the order of the first respondent dated 28.10.2005 made in I.A.No.8 of 2005 and quash the same.

2. It is also pertinent to note that originally, the Controlling Authority - the third respondent herein was not added and only by filing a petition in WPMP.NO.16824 of 2006, by an order dated 27.7.2006, he was arrayed as a party.

3. The case of the petitioner as stated in the affidavit in support of the writ petition is as follows :

The second respondent was employed as a permanent employee in the petitioner mill from 8.4.1961 and was terminated from service on 30.3.1998. The termination order was challenged by the second respondent before the Second Additional Labour Court, Chennai in I.D.No.86 of 1999 and by an order dated 11.6.2003, the order of dismissal was quashed in terms of the award. The petitioner was reinstated as per the order of the Second Additional Labour Court. However, with regard to gratuity, the petitioner disputed the entitlement. Hence, the second respondent was constrained to move the Controlling Authority - the third respondent herein in P.G.No.111 of 2004. The third respondent, by an order dated 26.11.2004, granted the relief in favour of the second respondent. As against the order of the third respondent, the petitioner filed an appeal before the first respondent along with an application to condone the delay of 64 days in filing the appeal. The first respondent, after taking note of the materials made available before him, came to the conclusion that the delay has not been properly explained and as per the statute, the Appellate Authority is not having any power to condone the delay of more than 120 days in filing an appeal. That order is put in issue in this writ petition.

4. All the grounds have been raised questioning the correctness or otherwise of the order of the first respondent. Though an attempt was made to improve the case by amending the prayer as well as arraying the third respondent as the third respondent, in the grounds raised originally, no improvement has been made to attack the order of the third respondent. Further, when the petitioner availed the statutory appeal remedy and lost before the statutory authority, the correctness of the order passed by the Appellate Authority can only be the subject matter of the writ petition and having lost the case before the statutory authority, once again, they cannot re-agitate the matter before this Court. As already stated, no such ground has been raised before this Court and no argument has been advanced as to the correctness of the order of the third respondent.

5. Now, the only question arises before this Court is as to whether the order of the Appellate Authority, which is impugned originally in the writ petition, is in accordance with the statute.

6. Section 7(7) of the Payment of Gratuity Act (hereinafter referred to as the Act) reads as follows:

"Any person aggrieved by an order under sub.section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub.section (4), or deposits with the appellate authority such amount."

7. As per Sub.Section (7) of Section 7 of the Act, any person aggrieved by an order under Sub.Section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal before the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. The first

proviso provides that if the Government or Appellate Authority is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within a period of sixty days, they can extend the period by a further period of sixty days. The second proviso provides for deposit of amount ordered by the Controlling Authority at the time of filing the appeal. That is not the issue before this Court.

8. Admittedly and according to the petitioner, the order of the Controlling Authority dated 26.11.2004 has been received by the petitioner on 11.2.2005. In such circumstances, the appeal ought to have been filed on or before 10.4.2005. That being so, power vests with the authority to consider even for the extended period of another sixty days, which expires on 10.6.2005, only if the authority is satisfied. Admittedly, in this case, the appeal has been filed on 15.6.2005. Hence, there is a delay of 5 days. However, in the application filed before the first respondent, the delay of 64 days has been stated by excluding the sixty days period provided under Sub.Section (7) of Section 7 of the Act.

9. It is well settled that when the statute provides for a period of limitation and an outer period of limitation, which vests with the discretion of the authorities, they cannot condone the delay beyond the period as provided under the statute itself. When the statute is very clear, no authority is required for this. If such an authority is required, usual reference can be made to the *impari materia* provisions of *Union of India Vs. Popular Construction Co.* (2001 (8) JT 271), *Special Officer, K.D.C.P.Works Ltd. Vs. A.A.under P.G.Act* (2001 (I) LLJ 1078) and *Quantas Engineers and Promoters Pvt.Ltd. Vs. Tamilnadu Taxation Special Tribunal and Others* (131 STC 529).

10. In such view of the matter, I am of the view that the order of the first respondent non-suiting the petitioner on the ground of limitation cannot be said to be illegal.

11. Learned counsel for the petitioner relies upon the decision of this Court in the case of *Palaniswamy, L Vs. Appellate Authority under the Payment of Gratuity Act* (1999 (2) CTC 568) wherein this Court held that the order of the Controlling Authority can be challenged before the Appellate Authority and such appeal should be filed within sixty days. The proviso empowers the Appellate Authority to condone the delay upto 60 days thereafter. On the facts of the above case, this Court held that the delay condonation petition ought to have been considered on merits and the impugned order not providing reasons for dismissing such petition was set aside.

12. So far as the present case is concerned, on the facts as stated above, the appeal itself was filed after the extended period provided under the statute. After referring the statute, I find that no further additional reason need be stated. On the other hand, the Appellate Authority has given a reason that except an averment in the affidavit that the petitioner required permission from the Government for filing the appeal, no other reason is stated. Even for this, no material is produced before the Appellate Authority. Hence, I am of the view that the order of the first respondent requires no re-consideration, as the same has been passed strictly in accordance with the statutory provisions.

13. As already stated, though the prayer has been amended to call for the records of the third respondent and quash the same, no argument has been advanced and no ground has been raised in the affidavit nor the grounds have been suitably amended. This Court cannot go into the correctness or otherwise of the impugned order.

14. In the result, the writ petition is dismissed. No costs. Consequently, the above WPMP is also dismissed.

RS

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Joint Commissioner of Labour under the Payment of Gratuity Act, 1972, Teynampet, Chennai-6.

2.The Assistant Commissioner of Labour-II - Controlling Authority under the Payment of Gratuity Act, 1972, Teynampet, Chennai-6.

1 cc to Mr.G.Thilakavathi, Advocate, SR.48580

1 cc to Mr.S.T.Varadharajulu, Advocate, SR.48523

1 cc to Government Pleader, SR.48574

hpr (co)

dv/1.11.06

WP.NO.12113 OF 2006 &
WPMP.No.13715 of 2006